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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 6722/2018

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 2026/02/10

SIGNATURE:

In the matter between:

BEN MATOME SENYOLO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BURNETT, AJ

INTRODUCTION

[1] This is an application for default judgment against the Road Accident Fund in terms of Rule 31 (2) of the Uniform Rules of Court read with the Practice Directives of this division.

[2] The default application before this court is in respect of merits and quantum. In respect of general damages, the Plaintiff seeks an order for loss of earnings.

[3] The necessary original documentation, i.e. a) combined summons; b) return of service; c) application for default judgment and d) notice of set down were properly filed with this court. There was proper service of the combined summons, application for default judgment and notice of set down on the Defendant. The court was satisfied that the matter was correctly enrolled and proceeded to hear the matter.

[4] There was no appearance on behalf of Defendant.

MERITS

[5] The Plaintiff was called to give oral testimony on the merits of the matter. The Plaintiff testified that he is 46 years old and residing at No. 1[...] Marironi Village, Tzaneen, Limpopo Province. He further testified that on 12 February 2018 at Deerposle Road, Tzaneen, a motor vehicle with registration numbers and letters B[...]2 collided head-on with the motor vehicle that he was driving (with registration numbers and letters B[...]). The Plaintiff further testified that the collision occurred by the negligent driving of the driver in B[...], and confirmed that the reasons for this accord with those that have been pleaded in the particulars of claim.

[6] The Plaintiff testified that he sustained injuries because of the collision.

[7] The Plaintiff was a credible witness and there was no reason before this court to reject his evidence.

APPLICATION IN TERMS OF RULE 38 (2)

[8] After the Plaintiff testified to the merits of the matter, he brought a formal application in terms of Rule 38 (2) of the Uniform Rules of Court, in terms of which he sought for his evidence in respect of quantum to be led by way of affidavit. Rule 38 (2) reads as follows: -

“The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.”

[9] The original application was filed before the court. Having considered the application and having regard to the fact that the matter before the court is a default judgment application, and that it would be practical and convenient to hear the evidence of the Plaintiff, and his expert witnesses via affidavit, the court granted the application in terms of Rule 38 (2).

EXPERT EVIDENCE

[10] The Plaintiff appointed expert witnesses to give evidence in support of his claim. The court is satisfied that these witnesses are in fact expert witnesses, and their evidence is accepted as such. Such experts included a Specialist Orthopedic Surgeon, a Specialist Neurosurgeon, a Clinical Psychologist, an Occupational Therapist, an Industrial Psychologist and an Actuary.

INJURIES

[11] The Plaintiff's injuries were mostly orthopedic in nature for which he has reached a maximum medical improvement. The Plaintiff was also diagnosed with having a mild brain injury.

[12] The Plaintiff had to use a wheelchair for an entire month after the collision whereafter he was dependent on crutches for about two months. The Plaintiff's orthopedic injuries have caused him to suffer chronic pain. He cannot stand and walk for prolonged periods, and neither can he climb stairs. Mr. MS Dibakoane (an Occupational Therapist) notes that the Plaintiff has a limping gait, poor sitting endurance, poor balance on unsteady surfaces and decreased muscle strength.

[13] Plaintiff's brain injury has caused him to experience migraines, short-temperedness and memory loss including some post-traumatic amnesia. The Plaintiff's migraines in turn affect his vision in his right eye. He has a poor sustained attention and concentration span. His problem-solving abilities have been affected as well as his general behaviour.

LOSS OF EARNINGS

[14] The Plaintiff was 35 (thirty-five) years at the time of the accident and worked as a self-employed vegetable hawker earning approximately R 4 500.00 (four thousand five hundred rand) per month. The Plaintiff is not currently earning an income. Mr. Dibakoane opined that the Plaintiff is an unskilled worker and is unable to meet the physical demands of his previous working environment.

[15] Dr. LTB Jackson (an Industrial Psychologist), opines that the Plaintiff would have been able to continue to work as a hawker, and continue doing so until the age of 65 (sixty-five) years old, but for the accident.

[16] According to Dr. Jackson the Plaintiff is an unskilled worker with a work history involving mostly physical work. Hard physical work is part and parcel of being a hawker and accordingly it is not possible for him to continue working in this capacity. Hawkers spend a great deal of time walking, standing and carrying heavy loads. Dr. Jackson does not believe Plaintiff's current capacity for sedentary (deskbound) roles because he does not have a matric qualification; his highest level of schooling is only grade 9. The Plaintiff is unlikely to work again.

[17] The actuary calculates the total loss of earnings (after contingency deductions) to be **R 3 746 324.00** (three million seven hundred and forty-six thousand three hundred and twenty-four rand). I am satisfied that the above actuarial calculations are a true reflection of the Plaintiff's loss of earnings.

CONTINGENCY DEDUCTIONS

[18] The actuary has included a contingency deduction of 15% (fifteen percent) in respect of pre-morbid loss of earnings and 20% (twenty percent) on the post morbid loss of earnings.

[19] A contingency deduction allows for the possibility that the Plaintiff may have less than normal expectations of life, and that he may experience periods of unemployment by reason of incapacity due to illness, accident, unrest or unstable economic conditions. The underlying rationale is that contingencies allow for general hazards of life.¹

[20] I deem the contingency loss applied by the actuary reasonable in the circumstances.

ORDER

[20] I accordingly make the following order: -

[20.1] The Defendant is 100% (one hundred percent) liable for the Plaintiff's proven and/or agreed damages.

[20.2] The Defendant pays the Plaintiff an amount of **R 3 746 324.00** (three million seven hundred and forty-six thousand three hundred and twenty-four rand) in respect of loss of earnings.

[18.3] The Defendant shall provide the Plaintiff with an undertaking in terms of 17 (4) (a) of the Road Accident Fund Act 56 of 1996 (as amended) in respect of future medical expenses.

[18.4] The Plaintiff's claim for general damages be postponed *sine die*.

[18.5] The Defendant shall be liable for the Plaintiff's costs of suit on a party and party High Court Scale B.

BURNETT, E J

¹ *Van der Plaats v Southern African Mutual Fire and General Insurance Co* 1980 (3) SA 105 (A) page 114 – 115.

**ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION**

APPEARANCES

FOR THE APPLICANT: - ADV. VF BALOYI
INSTRUCTED BY: -

DATE OF HEARING: - 11 NOVEMBER 2025
DATE OF JUDGMENT: - 10 FEBRUARY 2026